

EXHIBIT 5

STEPHEN H. MURRAY, SEPTEMBER 20, 2007

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,) Civil Action
vs.) No. 05 C 5140
NATIONAL ASSOCIATION OF)
REALTORS,)
Defendant.)

The videotaped deposition of
STEPHEN H. MURRAY, called as a witness for
examination, taken pursuant to the Federal Rules
of Civil Procedure of the United States District
Courts pertaining to the taking of depositions,
taken before PAULINE M. VARGO, a Notary Public
within and for the County of DuPage, State of
Illinois, and a Certified Shorthand Reporter of
said state, C.S.R. No. 84-1573, at Suite 3700,
One South Dearborn Street, Chicago, Illinois, on
the 20th day of September, A.D. 2007, at 9:06 a.m.

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14:27:57 1 given to me in my work when we were trying to do
14:28:00 2 this. That wasn't a complete list, but it was a
14:28:03 3 sample of rules.

14:28:06 4 If these brokers, this group that was
14:28:08 5 withdrawing to form something else complied with
14:28:13 6 the rules about membership and admittance and
14:28:17 7 various other things, it would not be
14:28:21 8 anticompetitive necessarily at all.

14:28:23 9 BY MR. KRAMER:

14:28:23 10 Q. Let's go back to your opinion that
14:28:24 11 threats of withdrawal from an MLS as a result
14:28:26 12 of the VOW policy were reasonable and any such
14:28:30 13 withdrawal would have been harmful to competition.
14:28:33 14 What did you mean there by "harmful to
14:28:35 15 competition," please?

14:28:38 16 A. Most, if not all, of the new
14:28:41 17 technologies and the platforms that provide
14:28:47 18 MLS-type features, Google, Yahoo, Point 2, AOL,
14:28:56 19 MSN, Trulia -- I could go on -- they have because
14:29:01 20 of their business models larger firms with more
14:29:04 21 listings and more advertising dollars, can purchase
14:29:07 22 and hold the top search positions in those search
14:29:11 23 engines; and therefore, what would end up happening
14:29:13 24 is that the largest firms with the largest budgets

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14:29:15 1 and the largest number of listings and the most
14:29:18 2 traffic and the most references, and there is all
14:29:21 3 kinds of measurements on these sites -- Yahoo is
14:29:24 4 another one -- that the firms that are largest with
14:29:27 5 the most listings would be found first by any
14:29:31 6 consumer doing a search. That's what I was
14:29:33 7 referring to in that regard.

14:29:38 8 Q. I am sorry to skip back, but I
14:29:40 9 overlooked a question I meant to ask a little while
14:29:42 10 ago, and when you were talking about groups of
14:29:50 11 brokers threatening to withdraw from an MLS in
14:29:52 12 connection with the VOW opt-out policy, what was
14:29:57 13 your expectation of what the withdrawing brokers
14:30:02 14 that threatened withdrawal would do as a substitute
14:30:06 15 to the original MLS?

14:30:06 16 A. I just mentioned a number of technology
14:30:09 17 companies and I will mention them again for this
14:30:11 18 particular question. Google, Yahoo, Trulia, Point
14:30:15 19 2 -- that's with the number "2" after the word
14:30:19 20 "point" -- Reply, Homescape. I can go on and list
14:30:26 21 numerous companies that have search and retrieval
14:30:30 22 capabilities on a real estate, residential real
14:30:33 23 estate website which would provide most, if not
14:30:38 24 all, of the MLS search and retrieval that's

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14:30:40 1 required by consumers, agents and brokers.

14:30:47 2 Q. Mr. Murray, what information did you
14:30:50 3 consider in reaching your opinion that threats of
14:30:53 4 withdrawal from the MLS as a result of the VOW
14:30:55 5 policy were reasonable and any such withdrawal
14:30:59 6 would have been harmful to competition?

14:31:01 7 A. As I have just said, most, if not all,
14:31:05 8 of the current technology providers that we are
14:31:08 9 aware of that could replace the technologies
14:31:10 10 provided by MLS provide for a bias in the search
14:31:15 11 for property, and the bias can favor and does often
14:31:21 12 favor the largest, the ones who spend the most, the
14:31:24 13 ones who have the most listings and so on and so
14:31:27 14 forth, which is contrary to the way MLSs operate
14:31:31 15 today.

14:31:32 16 Q. And do the technology companies that you
14:31:33 17 just referenced permit the exchange of offers of
14:31:37 18 cooperation and compensation?

14:31:38 19 A. Not today, not to my knowledge.

14:31:40 20 Q. Do you have any knowledge of them
14:31:45 21 offering that in the near future?

14:31:46 22 A. I know of at least one company that is
14:31:48 23 building that into their capabilities already.

14:31:51 24 Q. What company is that?

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14:31:51 1 A. Point 2 Technologies.

14:31:54 2 Q. And would you elaborate on what you know
14:31:56 3 about that, please?

14:31:56 4 A. I know that they are building in fields
14:32:00 5 into their data that has to do with the offer of
14:32:05 6 compensation and the offer to cooperate with
14:32:10 7 agents. They also are one of the few that operate
14:32:14 8 within the Point 2 system what we would refer to
14:32:16 9 as a peer-to-peer networking system where agents
14:32:21 10 and/or brokers now can execute what's called a
14:32:26 11 handshake. That is, if I am an agent and put my 20
14:32:29 12 listings on my personal site and you are an agent
14:32:31 13 in the same market with your 20 listings, if we
14:32:34 14 both agree to a handshake, then my listings are on
14:32:37 15 your page and your listings are on my page, which
14:32:40 16 now broadens the number of potential visitors to
14:32:43 17 our mutual site.

14:32:44 18 Q. So that handshake requires a
14:32:49 19 coordination between individual brokers?

14:32:50 20 A. Literally it's, you know, do you agree
14:32:54 21 this guy offers you a handshake, and you look at it
14:32:57 22 and you go "I agree," click. It's automatic.

14:32:59 23 Q. I take it, though, there are some
14:33:02 24 underlying considerations before agreeing to a

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14:33:03 1 handshake?

14:33:04 2 A. You know, I don't know the level of
14:33:06 3 detail, but as far as I know, the actual if you and
14:33:10 4 I knew each other and respect each other and both
14:33:13 5 wanted to exchange listings, it would be a matter
14:33:17 6 of those two mouse clicks.

14:33:18 7 Q. Let's go back to the opinion we were
14:33:21 8 discussing about, and let's go to the other facet,
14:33:24 9 the threats of withdrawal from the MLS as a result
14:33:28 10 of the VOW policy were reasonable. What
14:33:30 11 information did you consider in reaching that facet
14:33:34 12 of the opinion?

14:33:35 13 A. Discussions with numerous brokers and
14:33:37 14 reading of some documents that they had written.

14:33:47 15 Q. Anything else, sir?

14:33:49 16 A. No.

14:33:52 17 Q. And are the discussions that you are
14:33:53 18 talking about with numerous brokers the ones that
14:33:57 19 we were discussing before the last break?

14:33:59 20 A. Some of them were in those discussions,
14:34:01 21 yes.

14:34:04 22 Q. Which brokers do you remember
14:34:08 23 specifically then in connection with those
14:34:16 24 discussions that we are talking about now as